THE RESPONSIVE ANSWER IN EQUITY CONSIDERED AS EVIDENCE FOR THE DEFENDANT. — That the responsive answer of the defendant, under oath, is conclusive, unless contradicted by two witnesses or by one witness and circumstances as corroborative as the testimony of another witness, is a rule of equity well established by American authority. The fact that this forces the plaintiff not only to maintain the allegations of his bill but also to overcome the positive responsive averments of the answer by testimony equivalent to that of two witnesses gives the defendant an obvious advantage. So unjust has this advantage seemed, that the eminent Pennsylvania lawyer, John Marshal Gest, has been led in a recent article to investigate the origin, history, and scope of the rule and to urge the advisability of its abolition. *The Responsive Answer in Equity Considered as Evidence for the Defendant*, 52 Am. L. Reg. 537. The understanding of this rule necessitates the consideration of two others, the two-witness rule and the rule excluding the testimony of parties. The history of each of these is very properly but somewhat elaborately traced by the learned writer. He finds that the former rule existed in both the canon and civil law at the time the Chancery rules were being formulated, and that from these systems of law it was adopted by Equity. But although the latter rule was at the same time in operation in the courts of law, it was not made a part of equity practice, since its effect would have been to limit the power of the Chancellor in obtaining evidence for the enlightenment of his conscience. From the first, then, the defendant in equity, though a party, was compelled to answer under oath. It was not until later, however, that any part of this answer came to be regarded as evidence in the defendant's favor. The English authorities never went much farther than to consider only that part of the answer which was a denial of the bill as evidence for the defendant, which is but saying that the plaintiff must establish his allegations by more than one witness. But in America even positive averments in the answer which are responsive are considered as evidence for the defendant. The American doctrine was rested on the theory that, since the defendant could be compelled in this extraordinary manner to answer under oath, his answer should be considered as evidence for himself as well as for the plaintiff. For the reason, then, that it was evidence under oath, the plaintiff, having the burden of proof, could not, under the two-witness rule, rebut it by one oath alone. To-day, however, the answer of the defendant under oath is not extraordinary relief, for the rule excluding the testimony of parties has been abolished. Mr. Gest urges that since the existence of that rule was one of the main reasons for the origin and continuance of the equity rule, the latter should be abolished also. He suggests too that the weight of testimony can be more accurately determined by a consideration of the character of the witness than by depending upon preponderance in the number of witnesses. After following Mr. Gest's arguments one is not surprised to learn that the rule has been abolished in many American jurisdictions.

EFFECT OF MISTAKE UPON CONTRACTS. — An attempt has been made in a recent article to define the principles underlying the law on this subject, and to show how a failure to clearly recognize them has led to confusion among the authorities. *A Critical Analysis of the Law as to Mistake in its Effect upon Contracts*, Anon., 38 Am. L. Rev. 334 (May–June, 1904). The writer by a careful and searching analysis of the cases points out that the granting of relief against mistake rests upon two totally different theories. In the first class he places those cases in which, owing to a mistake of one party as to the contract itself, there has been no real meeting of the minds, and hence no valid contract. *Cf. Raffles* v. *Wichelhaus*, 2 H. & C. 906. Here the mistaken party must show that his mistake was reasonable; otherwise he is estopped from alleging it. Under the second class are included those cases where an actual meeting of the minds has been brought about by mistake as to some supposed fact. Here, not only must the mistake be common to both parties in order to avoid, but also it must be in regard to a fact so evidently within their contem-

plation that its turning out to be untrue amounts to a failure of consideration. The difficulty is to determine when the mistake is of this character. When it is so, the contract is voidable. The most common example is a mistake in regard to the quality of the thing sold; as, where one buys from another a bar of metal, both parties supposing it to be gold, and it turns out to be brass. There the buyer may rescind. Mistake as to some collateral fact, not of quality, may be said generally not to affect the contract; as, for example, those sales of land or chattels where it is within the contemplation of the parties that whatever speculative value the property may have shall belong to the vendee. Furthermore, such mutual mistake must be one of fact, not of law, except in two cases where equity grants relief: the first, where the mistake is one as to title or other matter of private right; the second, where the instrument fails to express the intention of the parties. As the writer notes, much of the conflict among the authorities and text writers upon this subject is probably due to a failure to distinguish these two separate principles, the tendency being to regard all mistakes as rendering the contract void. That contracts of the second sort should be void seems contrary to fundamental principles. The minds of the parties have met and consideration has been furnished by both. The fact that there has been a material failure of consideration does not negative the existence of the contract, but merely renders it voidable.

THE CY PRES DOCTRINE AND THE RULE AGAINST PERPETUITIES. — When one well-established principle of law comes in conflict with another, the amount of modification, if any, which occurs in each is always an interesting question. When these conflicting principles are the *cy pres* doctrine and the rule against perpetuities the question becomes, in addition, one of some intricacy. Mr. James Quarles in a recent article discusses this question. *The Cy Pres Doctrine, in Reference to the Rule against Perpetuities — An Advocation of its Adoption in all Jurisdictions*, 38 Am. L. Rev. 683 (Sept.-Oct.). After quoting from Mr. Perry in reference to the history of the rule against perpetuities, the writer concludes that all extensions of time in the rule were made on account of reluctance to destroy the will of the grantor. He then addresses himself to the question, "Why should not all limitations which transgress the period prescribed by the rule against perpetuities, instead of being adjudged void *in toto*, be given effect for the period allowed by that rule — in short, construed *cy pres*?" In support of his contention that they should be, he quotes approvingly from the opinion of Chief Justice Doe in the case of *Edgerly* v. *Barker*, 66 N. H. 434. He then refers to the technical *cy pres* doctrine and asserts that the "very genius of the *cy pres* principle is that persons as well as time should be amenable to its saving operation." The decisions under the Thellusson Act governing trusts for accumulation and those under the similar Pennsylvania Act are next considered and approved. The writer concludes with a plea that the broad principle of *cy pres* should be extended. It is to be regretted that the learned writer did not consider the possibility of selecting different periods which would not transgress the rule against perpetuities. The fact that there are many permissible periods is one objection, among others, which is urged against the writer's proposition by Professor Gray in 9 HARV. L. REV. 248. Had the learned writer noticed these objections his article would have been more complete, and had he answered them the conclusion at which he arrived could be more easily sustained.

ACQUISITION DU TERRITOIRE ET LE DROIT INTERNATIONAL, L'. *Ernest Nys.* Discussing the various modes of acquiring territory and the legal consequences resulting. 6 Rev. de Droit Internat. 359.

ACTIONS AGAINST THE COMMONWEALTH FOR TORTS. *A. P. Canaway.* Discussing Australian acts and decisions. 1 Commonwealth L. Rev. 241.